

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOSEPH RICHARD MORTON,

Petitioner,

v.

NETHENJAH BREITENBACH, *et al.*,

Respondents.

Case No. 3:24-cv-00310-MMD-CSD

ORDER

Petitioner Joseph Richard Morton, a *pro se* Nevada prisoner, commenced this action by filing a Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241 (ECF No. 1-1) as well as an incomplete Application for Leave to Proceed *In Forma Pauperis* (“IFP”) (ECF No. 1). The Court ordered Petitioner to either pay the \$5 filing fee or submit a complete IFP application with all required attachments no later than September 2, 2024. (ECF No. 3.) The Court warned Petitioner that a failure to comply by: (a) submitting a complete IFP application; or (b) paying the filing fee would result in the dismissal of this action without prejudice and without further advance notice. (*Id.*)

Although Petitioner filed an IFP application, it was incomplete because it did not include a financial certificate signed by Petitioner and an authorized official or a copy of Petitioner’s inmate account statement for the six-month period prior to filing. (ECF No. 1.) To date, Petitioner has not paid the \$5 filing fee, requested an extension of time, or taken any other action to prosecute this case.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming

1 dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court
2 apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987)
3 (affirming dismissal for failure to comply with court order). In determining whether to
4 dismiss an action on one of these grounds, the Court must consider: (1) the public's
5 interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3)
6 the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases
7 on their merits; and (5) the availability of less drastic alternatives. See *In re*
8 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
9 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

10 The first two factors, the public's interest in expeditiously resolving this litigation and
11 the Court's interest in managing its docket, weigh in favor of dismissal. The third factor,
12 risk of prejudice to defendants, also weighs in favor of dismissal because a presumption
13 of injury arises from the occurrence of unreasonable delay in filing a pleading ordered by
14 the court or prosecuting an action. See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir.
15 1976). The fourth factor—the public policy favoring disposition of cases on their merits—
16 is greatly outweighed by the factors favoring dismissal.

17 The fifth factor requires the Court to consider whether less drastic alternatives can
18 be used to correct the party's failure that brought about the court's need to consider
19 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that
20 considering less drastic alternatives *before* the party has disobeyed a court order does not
21 satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002)
22 (explaining that “the persuasive force of” earlier Ninth Circuit cases that “implicitly
23 accepted pursuit of less drastic alternatives prior to disobedience of the court's order as
24 satisfying this element[.]” *i.e.*, like the “initial granting of leave to amend coupled with the
25 warning of dismissal for failure to comply[.]” have been “eroded” by *Yourish*). Courts “need
26 not exhaust every sanction short of dismissal before finally dismissing a case, but must
27 explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779 F.2d 1421,
28 1424 (9th Cir. 1986). Because litigation cannot progress without Petitioner's compliance

1 with court orders, the only alternative is to enter a second order setting another deadline.
2 But the reality of repeating an ignored order is that it often only delays the inevitable and
3 squanders the court's finite resources. The circumstances here do not indicate that this
4 case will be an exception. Setting another deadline is not a meaningful alternative given
5 these circumstances. Accordingly, the fifth factor favors dismissal.

6 It is therefore ordered that this action is dismissed without prejudice based on
7 Petitioner Joseph Richard Morton's failure to comply with the Court's order.

8 It is further ordered that a certificate of appealability is denied as jurists of reason
9 would not find the Court's dismissal of the petition to be debatable or wrong.

10 It is further ordered that under to Rule 4 of the Rules Governing Section 2254
11 Cases, the Clerk of Court is directed to add Nevada Attorney General Aaron D. Ford as
12 counsel for respondents and informally serve the Nevada Attorney General by directing a
13 notice of electronic filing of this order to his office. No response is required from
14 respondents other than to respond to any orders of a reviewing court.

15 It is further ordered that the Clerk of the Court is instructed to enter final judgment
16 accordingly and close this case.

17 DATED THIS 12th Day of September 2024.

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20 MIRANDA M. DU
21 CHIEF UNITED STATES DISTRICT JUDGE
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